

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DAVID M. QUINN
2534 Anacapa Drive, #201
Costa Mesa, California 92626

Case No. 3031

OAH No.

Pharmacy Technician Registration No. TCH 31573,

Respondent.

DECISION AND ORDER

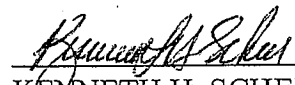
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy as its Decision in this matter.

This decision shall become effective on October 23, 2008.

It is so ORDERED on September 23, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 JAMES M. LEDAKIS

Supervising Deputy Attorney General

3 CARL W. SONNE, State Bar No. 116253

Deputy Attorney General

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8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 3031

14 DAVID M. QUINN

2534 Anacapa Drive, #201

Costa Mesa, CA 92626

OAH No.

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Pharmacy Technician Registration No. TCH
31573

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Virginia K. Herold (Complainant) is the Executive Officer of the Board of
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
23 by Edmund G. Brown Jr., Attorney General of the State of California, by Carl W. Sonne, Deputy
24 Attorney General.

25 2. David M. Quinn (Respondent) is representing himself in this proceeding
26 and has chosen not to exercise his right to be represented by counsel.

27 3. On or about November 22, 1999, the Board of Pharmacy issued Pharmacy
28 Technician Registration No. TCH 31573 to David M. Quinn (Respondent). The license was in

1 full force and effect at all times relevant to the charges brought in Accusation No. 3031 and will
2 expire on April 30, 2009, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3031 was filed before the Board of Pharmacy (Board), and
5 is currently pending against Respondent. The Accusation and all other statutorily required
6 documents were properly served on Respondent on July 24, 2007. Respondent timely filed his
7 Notice of Defense contesting the Accusation. A copy of Accusation No. 3031 is attached as
8 exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and
11 allegations in Accusation No. 3031. Respondent also has carefully read, and understands the
12 effects of this Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
16 the right to present evidence and to testify on his own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in
24 Accusation No. 3031, and agrees that cause exists for discipline and hereby surrenders his
25 Pharmacy Technician Registration No. TCH 31573 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the
27 Board's order accepting the surrender of his Pharmacy Technician Registration without further
28 process.

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1 by Respondent when the Board determines whether to grant or deny the application or petition.

2 17. Respondent shall pay the Board its costs of investigation and enforcement
3 in the amount of \$5,002 prior to issuance of a new or reinstated license.

4 ACCEPTANCE

5 I have carefully read the Stipulated Surrender of License and Order. I understand
6 the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into
7 this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and
8 agree to be bound by the Decision and Order of the Board.

9
10 DATED: AUG. 10, 2008

11
12 
13 David M. Quinn (Respondent)
14 Respondent

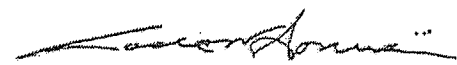
15 ENDORSEMENT

16 The foregoing Stipulated Surrender of License and Order is hereby respectfully
17 submitted for consideration by the Board.

18
19 DATED: 8/12/2008

20 EDMUND G. BROWN JR., Attorney General
21 of the State of California

22 JAMES M. LEDAKIS
23 Supervising Deputy Attorney General

24 
25 CARL W. SONNE
26 Deputy Attorney General
27 Attorneys for Complainant

28
DOI Matter ID: SD2006701367
80269345.wpd

Exhibit A
Accusation No. 3031

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 MARGARET A. LAFKO
Supervising Deputy Attorney General

3 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General

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8 Attorneys for Complainant

10 **BEFORE THE**
11 **BOARD OF PHARMACY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 3031

15 DAVID M. QUINN
2534 Anacapa Drive #201
Costa Mesa, CA 92626

ACCUSATION

16 Pharmacy Technician Registration No.
17 TCH 31573

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Virginia K. Herold (Complainant) brings this Accusation solely in her
23 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
24 Affairs.

25 2. On or about November 22, 1999, the California State Board of Pharmacy
26 issued Original Pharmacy Technician Registration Number TCH 31573 to DAVID M. QUINN
27 (Respondent). Said license will expire on April 30, 2009, unless renewed.
28

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code).

4. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a . . . , " "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

5. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

6. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

7. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods

8. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in

1 the course of relations as a licensee or otherwise, and whether the act is a
2 felony or misdemeanor or not.

3 (h) The administering to oneself, of any controlled substance, or
4 the use of any dangerous drug or of alcoholic beverages to the extent or in
5 a manner as to be dangerous or injurious to oneself, to a person holding a
6 license under this chapter, or to any other person or to the public, or to the
7 extent that the use impairs the ability of the person to conduct with safety
8 to the public the practice authorized by the license.

9 (j) The violation of any of the statutes of this state or of the United
10 States regulating controlled substances and dangerous drugs.

11 (p) Actions or conduct that would have warranted denial of a
12 license.

13 9. Section 118, subdivision (b), of the Code provides that the
14 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
15 jurisdiction to proceed with a disciplinary action during the period within which the license may
16 be renewed, restored, reissued or reinstated.

17 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
18 request the administrative law judge to direct a licentiate found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 11. Health & Safety Code § 11056 states in pertinent part:

22 (a) The controlled substances listed in this section are included in
23 Schedule III.

24 (b) Stimulants. Unless specifically excepted or unless listed in another
25 schedule, any material, compound, mixture, or preparation which contains any
26 quantity of the following substances having a stimulant effect on the central
27 nervous system, including its salts, isomers (whether optical, position, or
28 geometric), and salts of those isomers whenever the existence of those salts,
isomers, and salts of isomers is possible within the specific chemical designation:

(c) Narcotic drugs. Unless specifically excepted or unless listed in another
schedule, any material, compound, mixture, or preparation containing any of the
following narcotic drugs, or their salts calculated as the free anhydrous base or
alkaloid, in limited quantities as set forth below:

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters
or not more than 15 milligrams per dosage unit, with one or more active
nonnarcotic ingredients in recognized therapeutic amounts. Additionally, oral
liquid preparations of dihydrocodeinone containing the above specified amounts
may not contain as its nonnarcotic ingredients two or more antihistamines in
combination with each other.

1 12. Health & Safety Code § 11057 states in pertinent part:

2 (c) Narcotic drugs. Unless specifically excepted or unless listed in another
3 schedule, any material, compound, mixture, or preparation containing any of the
4 following narcotic drugs, or their salts calculated as the free anhydrous base or
5 alkaloid, in limited quantities as set forth below:

6 (1) Not more than 1 milligram of difenoxin and not less than 25
7 micrograms of atropine sulfate per dosage unit.

8 (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,
9 2-diphenyl-3-methyl-2-propionoxybutane).

10

11 13. Health & Safety Code § 11058 states in pertinent part:

12

13 (c) Narcotic drugs containing nonnarcotic active medicinal ingredients.

14 Any compound, mixture, or preparation containing any of the following narcotic
15 drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited
16 quantities as set forth below, which shall include one or more nonnarcotic active
17 medicinal ingredients in sufficient proportion to confer upon the compound,
18 mixture, or preparation valuable medicinal qualities other than those possessed by
19 narcotic drugs alone:

20 (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100
21 grams.

22 (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or
23 per 100 grams.

24 (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or
25 per 100 grams.

26 (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25
27 micrograms of atropine sulfate per dosage unit.

28

1 14. Health & Safety Code § 11170, entitled, Controlled Substances for Self

2 Use, states that, "No person shall prescribe, administer, or furnish a controlled substance for
3 himself."

4 15. Health & Safety Code § 11173, entitled, Fraud, Deceit, Misrepresentations

5 states, "(a) No person shall obtain or attempt to obtain controlled substances, or procure or

6 attempt to procure the administration of or prescription for controlled substances, (1) by fraud,

7 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

8 **DRUGS DEFINED:**

9 16. Robitussin AC's generic name is Guaifenesin syrup with codeine which is

10 a dangerous drug per section 4022 of the Code and a controlled substance per Health & Safety

11 Code section 11058 (c) (1).

12

1 17. Lomotil's generic name is Diphenoxylate/Atropine which is a dangerous
2 drug and a controlled substance per Health & Safety Code section 11058 (c) (4).

3 18. Darvocet-N's generic name is Propoxyphene/Acetaminophen which is a
4 dangerous drug and a controlled substance per Health & Safety Code section 11057 (c) (2).

5 19. Vicodin's generic name is Hydrocodone/Acetaminophen which is a
6 dangerous drug and a controlled substance per Health & Safety Code section 11056 (e) (4).

7 20. Ultram's generic name is Tramadol which is a dangerous drug.

8 **FACTUAL ALLEGATIONS:**

9 21. From approximately July 2005 through December 2005, David M. Quinn,
10 hereinafter Respondent, while on duty as a technician at Mission Hospital Regional Medical
11 Center Pharmacy in Mission Viejo, California, stole and ingested approximately 27 bottles (118
12 ml per bottle) of Guaifenesin with Codeine syrup, 64 tablets of Diphenoxylate with Atropine, 2
13 tablets of Propoxyphene with Acetaminophen, and 75 tablets of Hydrocodone with
14 Acetaminophen along with Tramadol, Loperamide and Pseudoephedrine for self administration.
15 Respondent admitted that he did not have a prescription for the stolen drugs; he was subsequently
16 terminated by his employer.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Possession of a Controlled Substances Without Prescription)**

19 22. Respondent is subject to disciplinary action under section 4060 in that
20 Respondent, while working at Mission Hospital Regional Medical Center Pharmacy (hereinafter
21 Respondent's employer), admitted to taking and ingesting controlled substances and/or
22 dangerous drugs in violation of Health & Safety Code section 11056 through 11058 as set forth
23 in the factual allegations above.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Self Administration of Controlled Substances)**

26 23. Respondent is subject to disciplinary action under section 4059(a) and
27 Health & Safety Code section 11170 in that Respondent administered and/or furnished himself
28 controlled substances and/or dangerous drugs as set forth in the factual allegations above.

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